

AHSEVILLE DIVISION

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Chapter 11

APPLICATION TO EMPLOY ATTORNEY

1. This is a Chapter 11 proceeding in which a voluntary petition was filed on April 1, 2011.
2. On January 26, 2011, Biltmore Investments, Ltd. filed a voluntary Chapter 11 proceeding, Case No. 11-10053. By Order entered on February 2, 2011, Hay was appointed attorney for the Debtor in that proceeding.
3. The Order appointing Hay in Biltmore Investments, Ltd. states “The named attorney has provided legal services to Asheville Downtown Holdings, Ltd, which shares common ownership with the debtor/debtor-in-possession, but does not consider that representation to constitute a conflict.”
4. The Application to Employ Attorney submitted by Hay in this proceeding states “However, the named attorney does represent debtor/debtor-in-possession Biltmore Investments, Ltd., in its Chapter 11 proceeding...The two entities share a common ownership, and are inter-related, including holding interests in *and being creditors of one another.*” (emphasis added)
5. The Order allowing the application to employ Hay in this proceeding was entered on April 6, 2011 (docket entry number 10) and states, among other things, that:

IT APPEARING that said attorney, Edward C. Hay, Jr. has no connection with the debtor/debtor-in-possession, its creditors or any parties in interest or their respective attorneys and represents no interest adverse to the debtor/debtor-in-possession or the estate and is a

disinterested person to represent the debtor/debtor-in-possession and the estate.

6. Schedule F of the Debtor's petition lists a "preferred loan to corporation" to Biltmore Investments, Ltd for \$40,000.00. Additionally, Biltmore Investments, LTD is listed as an equity security holder of the Debtor, owning 8.9% of the preferred stock.
7. Schedule B of Biltmore Investments, Ltd. petition lists as personal property of the estate "Stock and Note Asheville Downtown Holdings" in the amount of \$40,000.00 and \$95,045.00 in accounts receivable "Asheville Downtown Holdings."
8. While disclosing that he represents Biltmore Investments, Ltd., Hay states in his application to be employed in this proceeding that he has no connection with the debtor/debtor-in-possession, its creditors or any other party in interest. Hay further states that he is a "disinterested person to represent the debtor/debtor-in-possession and the estate."
9. Hay fails to meet the requirements of 11 U.S.C. §327(a) in that he holds or represents interests adverse to the estate, and he is not a disinterested person under 11 U.S.C. §101(14) due, but not limited to, the following:
 - a. Hay represents Biltmore Investment, Ltd. a creditor of Asheville Downtown Holdings, Ltd.
 - b. Hay represents Biltmore Investment, Ltd which owns 8.9% of the preferred stock of Asheville Downtown Holdings, Ltd.
10. Hay fails to meet the requirements of 11 U.S.C. §327(c) in that he has a conflict of interest in representing the DIP and a creditor of the DIP.

WHEREFORE, the undersigned respectfully moves the Court to reconsider the Order allowing the employment of Hay as attorney for the Debtor in this proceeding as Hay holds or represents interests adverse to the estate in violation of 11 U.S.C. §327 and is not disinterested as defined by 11 U.S.C. §101(14) and for such other and further relief as the court deems just and proper.

Dated: April 7, 2011

/s/ Linda W. Simpson

Linda W. Simpson

United States Bankruptcy Administrator

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**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

IN RE:

**ASHEVILLE DOWNTOWN
HOLDINGS, LTD.**

Debtor(s)

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) **Case No.: 11-10327**
) **Chapter 11**
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CERTIFICATE OF SERVICE

The undersigned certifies that the pleading(s) or paper(s) to which this Certificate is affixed was served upon the party(s) to this action listed below by depositing a copy of the same, enclosed in a first-class postpaid, properly addressed wrapper, in a Post Office or official depository under the exclusive care and custody of the United States Postal Service and/or by means of the Electronic Filing System of the Bankruptcy Court on April 7, 2011.

Asheville Downtown Holdings, Ltd.
P.O. Box 745
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